COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1148

KING ROOT CAPITAL, LLC

vs.

MASSASCHUSETTS ENVIRONMENTAL ASSOCIATES, INC., & another.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Rosemarie Spinazola[2] originally brought this case against Patrick Hannon and Massachusetts Environmental Associates, Inc. (MEA), in March 2006. One year later, she obtained a default judgment in the amount of $982,316 with interest (judgment). Approximately ten years later, she assigned her interest in the judgment to ABCD Holdings, LLC (ABCD), an entity owned by Hannon's former attorney, George McLaughlin, III. ABCD subsequently assigned its interest in the judgment to King Root Capital, LLC (King Root), an entity owned by McLaughlin's brother. In February 2017, King Root filed a motion for substitution as the plaintiff in this action, and requested an

[1] Patrick J. Hannon.

[2] As executrix of the estate of Clarence Spinazola, and cotrustee of the Clarence Spinazola 1994 Revocable Trust.

execution of the judgment pursuant to G. L. c. 235, § 19. Following an evidentiary hearing, the motion was allowed by a judge of the Superior Court in a well-reasoned memorandum of decision and order. Accordingly, an amended final judgment entered on June 13, 2017. Hannon and MEA appealed.

Background. We summarize the pertinent facts found by the judge as follows. McLaughlin did not represent Hannon in the underlying case between Spinazola and Hannon, but he did represent Hannon in 2007 when Spinazola obtained the judgment. McLaughlin negotiated a settlement agreement on behalf of Hannon with Spinazola, which was signed on November 16, 2007. As is relevant here, the settlement agreement provided that if Hannon made periodic payments to Spinazola, both he and MEA would be released from any claims under the judgment. If Hannon failed to make these payments, which he eventually did, Spinazola would be entitled to enforce the judgment.

McLaughlin continued to represent Hannon in various matters and in July 2011, he loaned Hannon money to purchase an interest in a company called ABC & D Recycling.[3] At that time, as the judge specifically found, Hannon accepted the possibility that his lawyer could become his creditor. Soon thereafter, in May

[3] This loan was made to Hannon (or an entity controlled by him) by Bright Horizon Finance, LLC (an entity controlled by McLaughlin). We refer to the parties rather than the entities for ease of reference.

2012, Hannon "unavoidably and permanently altered his relationship with McLaughlin when he filed for bankruptcy, defaulted on the loans [including the loan he received from McLaughlin in 2011], and thereby caused McLaughlin to be adverse to him in the bankruptcy proceedings."

Litigation over Hannon's debt to McLaughlin ensued, but McLaughlin was not successful in obtaining a preliminary injunction against Hannon to enjoin him from encumbering or disposing of his assets. In July 2016, an article appeared in the Massachusetts Lawyers Weekly newspaper that described McLaughlin's attempt to obtain the preliminary injunction; after having read the article, Attorney Peter Sutton, who represented Spinazola in the 2007 settlement of the case, contacted McLaughlin and, on behalf of Spinazola, offered to sell (or assign) the judgment. McLaughlin accepted the offer and, on September 14, 2016, Spinazola assigned the judgment to ABCD.

As previously noted, McLaughlin (through ABCD) sold the assignment of judgment to King Root, an entity owned and controlled by his brother, Daniel McLaughlin. King Root then filed a motion requesting that the court substitute it as the plaintiff and holder of the judgment. Additionally, King Root requested an execution of the judgment in its name. The motion was opposed by Hannon, who argued that the underlying assignment from Spinazola to ABCD was void as against public policy as a

result of McLaughlin's prior representation of him in connection with the very same judgment. Hannon also accused McLaughlin of using confidential information obtained from him during the course of that representation in violation of Mass. R. Prof. C. 1.8 (b), as appearing in 471 Mass. 1349 (2015),[4] and 1.9 (c), as appearing in 471 Mass. 1359 (2015).[5]

On May 22, 2017, a judge of the Superior Court held an evidentiary hearing at which McLaughlin, Daniel McLaughlin, and Sutton each testified. The judge made extensive findings of fact and rulings of law. He concluded that McLaughlin was the "de facto assignee" of the judgment and, while there was something "unseemly" about McLaughlin purchasing the judgment in these circumstances, "there [were] no prevailing public policy reasons that prevent[ed] McLaughlin from purchasing the right to enforce an unsatisfied judgment entered ten years [prior] in a case in which he did not represent Hannon." Accordingly, the judge allowed King Root's motion.

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[4] Rule 1.8 (b) states: "A lawyer shall not use confidential information relating to representation of a client to the disadvantage of the client or for the lawyer's advantage or the advantage of a third person, unless the client gives informed consent, except as permitted or required by these Rules."

[5] Rule 1.9 (c) states, in relevant part: "A lawyer who has formerly represented a client in a matter . . . shall not thereafter . . . use confidential information relating to the representation to the disadvantage of the former client or for the lawyer's advantage or the advantage of a third person . . . ."

Discussion. Hannon argues, as he did below, that the original assignment from Spinazola to ABCD is invalid because it is contrary to public policy and violates professional ethics rules. The invalidity of the first assignment, he argues, renders the subsequent assignment from ABCD to King Root void. Before we address the merits of Hannon's argument, we turn to the issue of standing, which was first raised by King Root in its appellate brief.

King Root contends that Hannon lacks standing to challenge the assignments because he is not a "party aggrieved" by the assignments, or the order substituting a new plaintiff for purposes of executing on the judgment.[6] As such, King Root argues, Hannon has no right to press this appeal. We agree.

The issue of standing can be raised at any point by the parties or a court sua sponte. See Pugsley v. Police Dep't of Boston, 472 Mass. 367, 371 (2015), and cases cited. See also Nature Church v. Assessors of Belchertown, 384 Mass. 811, 812 (1981). "To have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury." Sullivan v. Chief Justice for Admin. & Mgt. of the Trial Court, 448 Mass. 15, 21 (2006), quoting Shama v. Attorney Gen., 384

[6] General laws c. 231, § 113, states, in part: "A party aggrieved by a final judgment of the superior court . . . may appeal therefrom to the appeals court . . . ."

Mass. 620, 624 (1981). See Matter of the Receivership of Harvard Pilgrim Health Care, Inc., 434 Mass. 51, 55-56 (2001) (party to receivership proceeding before single justice, treated as amicus curiae and not as party, had no standing to appeal from orders of single justice because it was not "party aggrieved" within meaning of G. L. c. 231, § 114).

Here, Hannon has no standing because he has failed to demonstrate an injury. He is liable under the judgment and it matters not to whom he is liable. See A.J. Props., LLC v. Stanley Black & Decker, Inc., 469 Mass. 581, 586-587 (2014) (assignment of right carries with it all rights "incidental" to subject matter of assignment), and cases cited. As Hannon's attorney acknowledged at oral argument, his position with respect to the judgment did not change after either assignment. Moreover, Hannon does not argue, nor has he shown, that the original assignment to ABCD is invalid or void. At most, even if McLaughlin had violated the rules of professional responsibility, his conduct would not render the assignment void, but merely voidable. As such, Hannon, who is not a party (or a third-party beneficiary) to the assignment, has no standing to challenge it. See U.S. Bank Nat'l Ass'n v. Bolling, 90 Mass. App. Ct. 154, 156-157 (2016).

In light of our conclusion, we need not reach the merits of Hannon's argument. We note, nonetheless, that based on the

judge's findings that McLaughlin did not rely on or use any confidential information in connection with obtaining the assignment, and that McLaughlin and Hannon had an adverse relationship, which included litigation in at least two independent law suits, we conclude that the judge had a sound basis for determining that the assignment did not violate Mass. R. Prof. C. 1.8 and 1.9. While the conduct of the parties, McLaughlin in particular, gives us pause, if we were to address the merits, we would affirm the order allowing King Root's motion for the reasons articulated by the judge.

Amended final judgment affirmed.

By the Court (Vuono, Wolohojian & Englander, JJ.[7]),

Joseph F. Stanton

Clerk

Entered: August 19, 2019.

[7] The panelists are listed in order of seniority.